

INTERAGENCY AGREEMENT  
BETWEEN  
THE NATIONAL PARK SERVICE  
CHICKAMAUGA AND CHATTANOOGA NATIONAL MILITARY PARK  
MOCCASIN BEND NATIONAL ARCHEOLOGICAL DISTRICT UNIT  
AND  
THE DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS  
NASHVILLE DISTRICT

ARTICLE I – PURPOSE

The purpose of this agreement is to stabilize the right descending stream bank of Moccasin Bend on the Tennessee River in order to protect the cultural resources of the Moccasin Bend National Archeological District, a unit of the Chickamauga and Chattanooga National Military Park.

ARTICLE II – AUTHORITY

This Interagency Agreement ("IA") is entered into by and between the U.S. Department of the Army acting through the U.S. Army Corps of Engineers, Nashville District ("DA") and the U.S. Department of Interior ("DOI") acting through the National Park Service ("NPS") (collectively, "the parties") for the purpose of establishing a mutual framework that will govern the respective responsibilities of the parties for the provision of planning, design and construction goods and services at Moccasin Bend National Archeological District (Chattanooga, Tennessee). This IA is entered into pursuant to the Economy in Government Act (31 U.S.C. §1535) and Section 1 of the NPS Organic Act of 1916 (16 U.S.C. §1), which directs the NPS to "promote and regulate the use of Federal areas known as national parks, monuments and reservations ... and to conserve the scenery and the natural objects and the wildlife therein..."

ARTICLE III - BACKGROUND

The Nashville District of the Corps has prepared a Class C estimate, that is, conceptual costs based upon experience on similar projects and what is known about the site; but has not prepared the scope of work (See appendix A, Proposed Budget). Upon approval of the IA the Corps' project team shall visit the site and prepare a revised cost estimate Class B and the scope of work. The current cost estimates are \$494K for planning, design and preparation of plans & specifications, and \$6M for construction contingent on the output of the design and preparation phase and appropriation of additional funding.

#### ARTICLE IV – KEY OFFICIALS

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For the NPS:               Patrick H. Reed, Superintendent  
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#### ARTICLE V – RESPONSIBILITIES OF THE PARTIES

##### A. Responsibilities of the Department of the Army:

The DA shall provide planning and design services, to prepare contract documents for the construction of stream bank and cultural resources protection measures, to procure construction services in accordance with Federal Acquisition Regulations to enter into and administer construction contracts and to oversee the construction process.

1. Under this IA, the DA shall provide planning and design services, field investigations, and development of contract plans and specifications for stream bank and cultural resources protection measures on the right descending bank at Moccasin Bend, including National Environmental Policy Act compliance and related coordination, consultation with the State Historic Preservation Office (SHPO) and Tribal Historic Preservation Office (THPO), contract solicitation, award, management, construction supervision, planning and development of alternatives, and such other related goods or services as may be agreed upon in the future to stabilize the stream bank and protect cultural resources as approved by the NPS .
2. The DA shall collaborate with the NPS and provide an opportunity to review and approve all designs and plans prior to the solicitation phase of the project. All NPS comments shall be addressed by DA, and DA shall incorporate all comments following resolution by DA and NPS. The DA shall resolve differences with the NPS prior to finalizing approved plans and designs, amendments to solicitations, or modifications to contract documents. All subsequent review comments shall be addressed by DA and incorporated following resolution by DA and NPS. Representatives of the DA and the NPS shall meet at Chickamauga and Chattanooga National Military Park within 30 days of the signing of this IA to work out details of the statement of work for this project. The NPS shall have final approval on all documents after submittal and review including the selection of a preferred alternative in the planning phase.
3. The DA shall provide monthly progress, and financial reports to the NPS in sufficient detail to evaluate work progress, and compliance. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.
4. The DA shall provide the NPS an opportunity to review and revise scopes of work under this IA prior to approval.
5. The DA shall obtain voluntary access for survey and exploration by COE form ENG Form 1258 (Right of Entry for Survey and Exploration) to all work sites and support facilities, and shall perform all coordination work with and obtain all permits from state and local agencies required for preliminary site investigations prior to construction.
6. DA personnel are to attend meetings, make site visits, coordinate with NPS and perform other project-related duties.
7. Engineering-Construction Division (EC) at DA, Cost Engineering and Management Support Branch to award topographical survey contract, develop Class B cost estimates for the various design alternatives, and prepare final plans and specifications with Class A cost estimates.
8. Archeological survey contract shall be awarded and supervised by DA.

9. The DA's Environmental Restoration Branch to perform Phase I assessment of hazardous environmental conditions.
10. The DA's Hydrology and Hydraulics Branch to provide input to design of stream bank stabilization.
11. The DA's Geotechnical Branch to design riprap.
12. Contract to design bioengineering shall be awarded and supervised by DA.
13. The DA's Planning, Programs and Project Management Division, Project Planning Branch to coordinate with NPS, TVA, public and other stakeholders, prepare NEPA documents and Section 106 compliance in accordance with NPS guidelines and policy (Director's Order 12 at <http://data2.itc.nps.gov/npspolicy/DOrders.cfm>.) and Decision Document, obtain necessary permits, coordinate design activities and manage the project.
14. The DA shall be responsible for tribal consultation in all aspects of this IA, including the archeological survey and compliance aspects of this project. The DA shall be the federal government point of contact for each occasion of need for tribal consultation.
15. The DA will prepare plans and specifications in accordance with NPS standards and format. NPS-10 Release No. 3, NPS CADD User's Guide, and NPS specifications are available at [http://workflow.den.nps.gov/staging/6\\_Design/design\\_bid\\_build.htm](http://workflow.den.nps.gov/staging/6_Design/design_bid_build.htm)
16. The DA's Construction Branch to review plans & specs prior to contract award.
17. The DA's Contracting Division to solicit, advertise and award construction task order.
18. DA to prepare monthly progress report and detail of costs incurred.
19. DA will prepare supporting information for park presentation for further NPS construction approval.

B. Responsibilities of the National Park Service:

The NPS will obligate funds in accordance with the approved budget not to exceed \$494,000 to pay costs associated with the DA's provisions of goods or services under this IA, in accordance with the approved Budget/Proposal not to exceed the obligated funding. All subsequent funding is subject to the availability of funds. The NPS will review all documents after submittal. The NPS will give final approval on plans and documents, including the selection of a preferred alternative in the planning phase.

1. The NPS will acquire all lands required for the construction of the project in accordance with P.L. 91-646, as amended. Upon completion of lands acquisition, the NPS will furnish Authorization for Entry and Attorney's Certificate of Authority prior to the DA commencing work.

2. NPS personnel will attend meetings, make site visits, and perform other project-related duties. The NPS will coordinate with the DA and perform all duties specified under this IA. Representatives of the DA and the NPS shall meet at Chickamauga and Chattanooga National Military Park within 30 days of the signing of this IA to work out details of the statement of work for this project.
3. In the unlikely event that voluntary access for survey and exploration can not be obtained by COE, the NPS will acquire the necessary interest for survey and exploration, by exercise of the power of eminent domain, in the event an affected landowner is unable or unwilling to execute ENG Form 1258 in accordance with applicable DA regulations.
4. The NPS will acquire any Right of Entry for Construction purposes, prior to acquisition of permanent interest in project lands, in the event a right of entry for construction purposes is required.
5. The NPS shall certify, prior to the execution of this IA, that the IA complies with the requirements of the Economy in Government Act.
6. The NPS shall pay all costs associated with the DA's provisions of goods or services under this IA and shall certify, at the time of signature of the IA, the availability of funds necessary to accomplish that IA.

#### ARTICLE VI - FUNDING

- A. The NPS will pay all costs associated with the DA's provision of goods or services under this IA, presently estimated not-to-exceed \$494,000. The DA's budget shall include costs for supporting travel and lodging for tribal consultations. The DA shall bill the NPS monthly for costs incurred and the NPS shall reimburse the DA within 30 days of each monthly billing.
- B. All additional funding is subject to the availability of funds. The ability of the parties to carry out their responsibilities under this agreement is subject to their respective funding procedures and the availability of appropriated funds. Should either party encounter budgetary problems in the course of its respective internal procedures which may affect the activities to be carried out under this agreement, that party will notify and consult with the other party or parties in a timely manner.
- C. Within 90 days of completing the work under this IA, the DA shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the DA shall return to the NPS any funds paid in excess of the actual costs as then known, or the NPS shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the NPS's duty in accordance with Article X to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

## ARTICLE VII - APPLICABLE LAWS

This IA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law or as specifically identified in this IA, all contract work undertaken by the DA shall be governed by DA policies and procedures. Specific laws and regulations that apply include, but are not limited to, Public Law 108-7, Section 160, 117 Stat. 247 (establishing Moccasin Bend National Archeological District), the Native American Graves Protection and Repatriation Act of 1990, as amended, (25 USC 3001 et seq.), Native American Graves Protection and Repatriation Act: Final Rule (43 CFR 10), National Environmental Policy Act of 1969 as amended (42 USC 4321, and 4331 - 4335), Preparation of Environmental Impact Statements: Guidelines (40 CFR 1500), National Historic Preservation Act of 1966, as amended (16 USC 470 et seq.), Protection of Historic Properties (36 CFR 800), Archaeological Resources Protection Act of 1979, as amended (16 USC 470aa-mm), Protection of Archeological Resources (43 CFR 7), and Executive Order 13175 Consultation and Coordination with Indian Tribal Governments.

## ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES

- A. All claims and disputes by contractors arising under or relating to contracts awarded by the DA shall be resolved in accordance with Federal law and the terms of the individual contract. The DA shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. § 601-613). The Armed Services Board of Contract Appeals (ASBCA) is designated as the appropriate board of contract appeals. In lieu of appealing to the ASBCA or its successor, the contractor may bring an action directly to the United States Court of Federal Claims.
- B. The DA shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. The DA shall notify the NPS of any such litigation and will afford the NPS an opportunity to review and incorporate all comments on the litigation proceedings and concurrence on all resulting settlement negotiations.

## ARTICLE IX - DISPUTE RESOLUTION

- A. The parties agree that, in the event of a dispute between the parties, the NPS and the DA shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties.
- B. Nothing herein is intended to conflict with current DOI or DA directives. If the terms of this agreement are inconsistent with existing directives of either of the agencies entering into this agreement, then those portions of this agreement which are determined to be inconsistent

shall be invalid, but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, all necessary changes will be accomplished either by an amendment to this agreement or by entering into a new agreement, whichever is deemed expedient to the interest of both parties.

- C. Should disagreement arise on the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. The buyer and the seller are expected to resolve any dispute within 30 business days of the billing date using existing dispute mechanisms. The parties agree that, in the event such measures fail to resolve the dispute, they shall refer it for resolution to the Office of Management and Budget.

#### ARTICLE X — LIABILITY FOR COSTS

If liability of any kind is imposed on the United States relating to the DA's provision of goods or services under this IA, the DA shall accept accountability for its actions, but the NPS shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability, and all related costs. This obligation extends to all funds legally available to discharge this liability, including funds that may be made legally available through transfer, reprogramming or other means. Should the NPS have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, they remain responsible for seeking additional funds from Congress for such purpose, although nothing in this IA shall be construed to imply that Congress will appropriate funds sufficient to meet the liability.

#### ARTICLE XI - PUBLIC INFORMATION

Justification and explanation of the NPS's programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of the NPS. The DA shall provide, upon request, any assistance necessary to support the NPS's justification or explanations of the NPS's programs conducted under this IA. The NPS is responsible for all public information. The DA shall make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. The NPS and the DA will give the other party five days advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to this IA. Public information released by either the NPS or the DA is limited by the confidentiality provisions of ARPA and NAGPRA.

## ARTICLE XII - MODIFICATION AND TERMINATION

This IA may be modified only by written, mutual agreement of the parties. Either party may terminate this IA by providing written notice to the other party. The termination shall be effective upon the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination, the NPS shall continue to be responsible for all costs incurred by the DA under this IA and for the costs of closing out or transferring any on-going contracts.

## ARTICLE XIII – TERMS OF AGREEMENT

This IA will be effective for a period of two-years to cover the planning phase of this project and can be amended and extended to cover the construction phase of this project.

## ARTICLE XIV – EFFECTIVE DATE

This IA shall become effective as of the date last signed below.

National Park Service

Department of the Army, Corps of Engineers

\_\_\_\_\_  
Patrick H. Reed                      Date  
Park Superintendent

\_\_\_\_\_  
Byron G. Jorns                      Date  
Lieutenant Colonel  
District Engineer  
Nashville District

\_\_\_\_\_  
Kimberly L. Washington              Date  
NPS Contracting Officer

\_\_\_\_\_  
Cassandra D. Mora                      Date  
Chief, Contracting Division  
Nashville District



## Appendix A – Proposed Budget

### Breakout of Nashville District Corps' Estimated Costs for Moccasin Bend Stream Bank Stabilization Project

Nashville District has prepared a Class C estimate, that is, conceptual costs based upon our experience on similar projects and what we know about the site; we have not prepared scopes of work. Though Corps personnel have seen the site, the technical team members have not. After award the Corps' project team will visit the site and prepare a revised cost estimate Class B and the scope of work. The Class B estimate will give more consideration to the apparent extent of cultural resources and the anticipated usage and cost of bioengineering.

The current cost estimates are \$494K for planning, design and preparation of plans & specs, and \$6M for construction.

#### \$494K for Planning, Design and Development of Plans & Specifications

\$14K for Real Estate Division to obtain rights-of-entry and prepare Real Estate Report.

\$60K for Engineering-Construction Division (EC), Cost Engineering and Management Support Branch to award topo survey contract, develop cost estimates for the various design alternatives, and prepare plans & specs.

\$100K for topo survey contract.

\$60K for archeological survey contract.

\$10K for EC, Environmental Restoration Branch to perform Phase I assessment of hazardous environmental conditions.

\$10K for EC, Hydrology and Hydraulics Branch to provide input to design of stream bank stabilization.

\$50K for EC, Geotechnical Branch to design riprap.

\$50K for contract to design bioengineering.

\$136K for Planning, Programs and Project Management Division, Project Planning Branch to coordinate with NPS, TVA, public and other stakeholders, prepare NEPA documents, and Decision Document, obtain necessary permits, coordinate design activities and manage the project.

\$4K for EC, Construction Branch to review plans & specs prior to contract award.

\$3K for Contracting Division to solicit, advertise and award construction task order.

#### \$6.0M for Construction

\$4.8M for construction contract and bond.

\$360K for construction management and coordination.

\$50K for archeological mitigation.

\$790K (15%) contingency.

Walter R. Green, Jr.  
Project Manager